

## PURPOSE

The purpose of this policy is to establish a process for the Michigan Department of Health and Human Services (MDHHS) when handling appeals regarding the findings, remedial action, or timeliness of the complaint investigation at state operated facilities, hospitals and centers. This policy serves to assure all recipients and those acting on their behalf are afforded due process, including its essential elements of notice and an opportunity to be heard by a fair and impartial decision-making entity.

## REVISION HISTORY

This policy has not been updated since original publication effective date of May 16, 2010.

## DEFINITIONS

**Appeals committee** means the committee appointed by the MDHHS Director to hear Step 1 appeals brought by or on behalf of recipients in MDHHS hospitals/centers or, by agreement with the department, Step 1 appeals brought by or on behalf of recipients in licensed hospitals.

**Appellant** means the complainant or, if different than the complainant, the recipient or his/her legal guardian, if any, who seeks review by the appeals committee or the MDHHS pursuant to sections 784 and 786 of the Mental Health Code.

**Code** means the Mental Health Code.

**Complainant** means the individual who files a recipient rights complaint.

**Facility** means, for purposes of this policy, a department operated psychiatric hospital or center and the Center for Forensic Psychiatry.

**Legal guardian** means a judicially appointed guardian or parent with legal custody of a minor recipient.

**Office** means the MDHHS Office of Recipient Rights.

## POLICY

It is the policy of the MDHHS to assure all recipients and those acting on their behalf are afforded due process, including its essential elements of notice and an opportunity to be heard by a

fair and impartial decision-making entity, through the establishment of the recipient rights appeals committee and implementation of the Step 1 appeals process in compliance with Chapter 7A of the Michigan Mental Health Code.

**STANDARDS**

1. The director of the department shall appoint an appeals committee to hear Step 1 appeals. The committee shall consist of seven individuals, none of whom shall be employed by the department or a community mental health service program. The committee shall include at least three members of the state recipient rights advisory committee and two primary consumers.
2. The office shall assure that training is provided to the appeals committee. Topics shall include the following:
  - a. Categories of rights violations.
  - b. The complaint investigation process.
  - c. Types and weighing of evidence.
  - d. Explanation of the preponderance of the evidence standard used by the rights office in determining whether a rights violation has occurred.
  - e. Statutory definition of appropriate remedial action.
  - f. MDHHS disciplinary guidelines.
  - g. MDHHS policy/procedures on the appeal process and functions of the appeals committee.
3. Every complainant, recipient if different than the complainant, and the recipient's legal guardian, if any, shall be informed in the summary report issued by the facility director of the right to appeal to the appeals committee (Step 1 Appeal). Notice shall include the address for filing the appeal, the grounds for appeal as stated in section 784(2) of the code, the time frame for submission of the appeal, information on advocacy organizations that may assist with filing the written appeal, and an offer of assistance by the office of recipient rights in the absence of assistance from an advocacy organization. All Step 1 appeals are to be sent to the following address:

Step 1 Appeals Coordinator  
MDHHS-ORR  
Lewis Cass Building  
Lansing, Michigan 48913

4. Not later than 45 days after receipt of the summary report under section 782 of the code, the appellant may file a written appeal with the appeals committee.
5. If the summary report contains a plan of action to be completed in the future, it must contain a date or time-period certain indicating when the plan of action will be completed. The facility director shall assure that the complainant, recipient if different than the complainant, his/her legal guardian, if any, and the office are provided written notice of the completion of the plan. The notice shall include specific information as to the action that was taken and the date that it occurred. The complainant, recipient if different than the complainant and his/her legal guardian, if any, shall be afforded 45 days from the date of the mailing of the notice to appeal to the appeals committee on the grounds of inadequate action taken to remedy a rights violation.
6. If the plan is not completed by the date/time-period indicated in the summary report, the facility director shall assure that the complainant, recipient if different than the complainant, his/her legal guardian, if any, and the office are provided a written status report by the date that the action or plan of action was to have been completed. The written report shall include specific information as to the status of the plan of action, justification for the delay in completion and the expected date of completion. The complainant, recipient if different than the complainant and his/her legal guardian, if any, shall be afforded 45 days from the date of mailing of the status report to appeal to the appeals committee on the ground that inadequate action was taken to remedy a rights violation.
7. Grounds for appeal to the appeals committee shall be as follows:
  - a. The investigative findings of the office are not consistent with the facts or with law, rules policies or guidelines.
  - b. The action taken or plan of action proposed by the facility director does not provide an adequate remedy.

- c. An investigation was not initiated or completed on a timely basis.
- 8. Within three business days of receipt of the appeal, members of the appeals committee shall review the appeal to determine if it meets the criteria stated above. This review may be conducted by the full committee or by an individual member or subcommittee designated by the full committee to fulfill this responsibility. The committee shall maintain a log of all appeals received and the disposition of each.
- 9. Within five business days of receipt of the appeal, written notice that the appeal has been accepted shall be provided to the appellant and a copy of the appeal shall be provided to the facility director and to the director of the office. The appellant shall also be informed within the same time frame when the appeal has not been accepted because it did not meet the criteria set forth in 7 above.
- 10. The director of the office shall assure a copy of the complaint, any status reports, the report of investigative findings and the summary report involved in the appeal are forwarded to the appeals committee.
- 11. Within 30 days after receipt of a written appeal that is found to state one or more of the grounds cited in 7 above, the appeals committee shall meet in a non-public session and review the facts as stated in all complaint investigation documents. Any member of the appeals committee who has a personal or professional relationship with an individual involved in the appeal shall abstain from participating in that appeal as a member of the committee. The committee shall not consider additional allegations that were not part of the original complaint at issue on appeal but shall inform appellant of his/her right to file the complaint with the office.
- 12. At the meeting referenced in 11 preceding, the appeals committee shall do one of the following:
  - a. Uphold the investigative findings of the office and the action taken or plan of action proposed by the facility director.
  - b. Return the investigation to the office Field Manager and direct that it be reopened or reinvestigated.

- c. Uphold the investigative findings of the office but direct that the facility director take additional or different action to remedy the violation.
  - d. If the committee confirms that the investigation was not initiated or completed in a timely manner, recommend that the director of the office assure appropriate supervisory action with the investigating rights advisor.
13. The appeals committee shall document its decision in writing within 10 working days following the decision and shall provide copies of such to the appellant, recipient if different than appellant, the recipient's legal guardian, if any, the facility director and the director of the office. Documentation shall include justification for the decision made by the committee.
14. If the appeals committee directs that the office reopen or reinvestigate the complaint, the office shall submit another investigative report within 45 days of receipt of the written decision of the committee to the facility director in compliance with Section 778(5) of the Mental Health Code. The 45 day time frame may be extended at the discretion of the appeals committee upon a showing of good cause by the office. At no time shall the time frame exceed 90 days. Within 10 business days of receipt of the investigative report, the facility director shall issue another summary report in compliance with Section 782 of the code. The summary report shall be submitted to the appellant, recipient if different than the appellant, the recipient's legal guardian, if any, the office and the appeals committee.
- a. If the investigative findings of the office remain the same as those appealed, the appellant may file a Step 2 appeal to the MDHHS Administrative Tribunal. The summary report shall contain information regarding the appellant's right to further appeal, the address where the appeal should be sent, the time frame for the appeal and the ground for appeal. The report shall also inform the appellant of advocacy organizations that may assist in filing the written appeal or offer the assistance of the office in the absence of assistance from an advocacy organization.
  - b. If the investigative findings result in the substantiation of a previously unsubstantiated rights violation but the appellant disagrees with the adequacy of the action or plan of action proposed by the facility director, appellant

may file an appeal on such grounds to the appeals committee. The summary report shall inform the appellant of this right as well as further information as stated in a. above.

15. If the appeals committee upholds the findings of the office and directs that the facility director take additional or different action, that direction shall be based on the fact that appropriate remedial action has not been taken in compliance with Section 722(2) and 780 of the code.
  - a. The appeals committee shall base its determination upon any or all of the following:
    1. Disciplinary action was not taken with an employee for substantiated abuse or neglect when it was possible to do so.
    2. Action taken or proposed did not correct or remedy the rights violation.
    3. Action taken or proposed was/will not be taken in a timely manner.
    4. Action taken or proposed did not/will not prevent a future recurrence of the violation.
  - b. Written notice of this direction for additional or different action to be taken by the facility director shall also be provided to the office.
  - c. Within 30 days of receipt of the determination from the appeals committee, the facility director shall provide written notice to the appeals committee that the action has been taken or justification as to why it was not taken. The written notice shall also be sent to the appellant, recipient if different than appellant, the recipient's legal guardian, if any, and the office.
  - d. If the action taken by the facility director is determined by the appeals committee and/or the appellant still to be inadequate to remedy the violation, the appellant shall be informed by the appeals committee of his/her right to file a recipient rights complaint against the facility director for violation of section 754(3)(c) of the code.

16. Step 2 Appeal:

- a. An appeal to MDHHS may be taken only on the ground that the investigative findings of the office were inconsistent with facts, law, rules, policies or guidelines and only after a decision on an appeal has been made by the appeals committee.
- b. Within 45 days after receiving written notice of the decision of the appeals committee under section 13 or the summary report under sections 14 or 15 preceding, the appellant may file a written appeal with MDHHS. The written appeal shall be mailed to:

Michigan Administrative Hearings System  
Attn: Step 2 Rights Appeal  
PO Box 30763  
Lansing, MI 48909

- c. Upon receipt of the appeal, MAHS shall give written notice of the receipt to the director of the office. The director of the office shall ensure that MDHHS has access to all necessary documentation and other evidence cited in the complaint and Step I appeal.
- d. MAHS shall review the record generated by the Step 1 appeal. It shall not consider additional evidence or information that was not available during that appeal.
- e. Within 30 days after receiving the appeal, MAHS shall review the appeal and do one of the following:
  - 1. Affirm the decision of the appeals committee.
  - 2. Return the matter to the director of the office with instruction for additional investigation or consideration.
- f. MAHS shall provide copies of its action to the appellant, recipient if different than appellant, the recipient's legal guardian, if any, and the director of the office. If MAHS upholds the findings of the office, notice shall be provided to the appellant of his/her legal right to seek redress through the circuit court.
- g. If the MAHS instructs that additional investigation be conducted, the director of the office shall assure that such investigation is completed in a fair and impartial manner within 45 days of his/her receipt of the written notice from MAHS. The 45 day time frame may be extended at

MAHS's discretion upon a showing of good cause by the director of the office. At no time shall the time frame exceed 90 days. In cases of re-investigation by the office, the director of that office shall ensure the submission of the investigative report to the appropriate facility director.

- h. Within 10 business days of the receipt of the investigative report, the facility director shall issue a summary report in compliance with Section 782 of the code to the Administrative Tribunal, appellant, recipient if different than appellant and the recipient's legal representative, if any.
  - 1. If the findings of the additional investigation remain the same as those appealed, MAHS shall inform appellant, recipient if different than appellant and the recipient's legal guardian, if any, in writing of the right to seek redress through the circuit court.
  - 2. If the additional investigation results in the substantiation of previously unsubstantiated violation but the appellant, recipient if different than the appellant and/or the recipient's legal guardian, if any, disagrees with the adequacy of the action taken or plan of action proposed to remedy the violation, the department shall inform the individual(s) of the right to appeal this to the appeals committee.

17. Mediation.

- a. At any time after the office completes the investigative report, the parties may agree to mediate the dispute. A mediator shall be jointly selected to facilitate a mutually acceptable settlement between the parties. The mediator shall be an individual who has received training in mediation and who is not involved in any manner with the dispute or with the provision of services to the recipient.
- b. If the parties agree to mediation and reach agreement through the mediation process, the mediator shall prepare a report summarizing the agreement, which shall be signed by the parties. The signed agreement shall be binding on both parties. Notice that an agreement has been reached shall be sent to the office.



- c. If the parties fail to reach agreement through the mediation process, the mediator shall document that fact in writing and provide a copy of the documentation to both parties and the office within 10 days after the end of the mediation process.
- d. If the parties engage in mediation, all appeal and response times required under this chapter are suspended during the period of time the mediation process is taking place. The suspension of time periods begins on the day the parties agree to mediate and expires five days after the day the mediator provides the written documentation to the parties and the office that mediation was not successful.

## **REFERENCES**

- Michigan Mental Health Code, MCL 330.1752
- Michigan Mental Health Code, MCL 330.1772 – MCL 330.1788

## **CONTACT**

For additional information concerning this policy, contact the Director of the Office of Recipient Rights at (517) 373-2319.